IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 670 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

PRATAPMAL BHURUMAL

Appearance:

1. Criminal Appeal No. 670 of 1991

MR KT DAVE, APP, for Petitioner No. 1

M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/06/2001

ORAL JUDGEMENT

1. This criminal appeal is preferred by the State of Gujarat against the judgment and order passed by learned Judicial Magistrate, First Class, Gondal, in Criminal Case No.745 of 1980 on June 18, 1991. The accused-present respondent was charged to have committed offences punishable under Sections 409, 466, 467, 471 and

477(a) of Indian Penal Code. He came to be acquitted by the learned Judicial Magistrate, First Class, which has given rise to this appeal.

2. The facts leading to the present appeal can be stated, in brief, as under :-

2.1 The respondent was working as a Writer-Head Constable with Gondal Taluka Police Station and while he was working as such between October 28, 1977 and September 16, 1979, it is alleged that he misappropriated an amount of Rs.26,771.20 ps. entrusted to him. The said amount was seized by the police during the course of investigation in N.C. Cases Nos.2/76, 2/77, C.R. No.142/78 and C.R. No.1 of 1979. It is the case of the prosecution that this amount was falsely indicated by the respondent as having been sent to the Court by fabricating a false entry in the register and forging signature of the Court Clerk to indicate that it was duly received by the Court Clerk. The whole episode came to the light when he went on sick leave and charge could not be taken by the person who was given his charge. As a result thereof, an F.I.R. was lodged by the C.P.I. On basis of that F.I.R., investigation was made and the Investigating Agency having found sufficient evidence of forgery and misappropriation having been committed by the respondent herein, filed charge sheet and the case was registered before the learned Judicial Magistrate, First Class, Gondal, as Criminal Case No.745 of 1980.

2.2 The learned Magistrate, during the course of trial, initially framed charge against the respondent-accused at Ex.15. The accused-respondent pleaded not guilty to the charge and the trial was proceeded with. The learned Trial Magistrate, after considering evidence on record, came to a conclusion that the prosecution could not prove the charge against the accused and, therefore, ultimately, acquitted the accused of the charges levelled against him. Aggrieved by the said judgment and order, the State has preferred the present appeal.

3. Heard learned Additional Public Prosecutor Mr. Dave for the appellant. None appears for the respondent.

4. Learned Additional Public Prosecutor Mr. Dave has taken this Court through the record and proceedings. He has read the evidence and the judgment closely.

5. According to Mr. Dave, the learned Trial Magistrate has overlooked the aspect that respondent was

in charge of the muddamal and the muddamal, though indicated to have been sent to the Court of learned Judicial Magistrate, First Class, has not reached the Court of learned J.M.F.C. Obviously, it was for the respondent to have explained as to where the muddamal has gone. Mr. Dave also submitted that the register in which entries are made of having sent the muddamal to the Court was maintained by the respondent and the signature of the recipient is found to have been forged and, therefore, the Court ought to have accepted the case of the prosecution that the respondent made false entries and misappropriated the amount to his personal use. Mr. Dave submitted that there cannot be any direct proof of such criminal activities carried out schemingly. He, therefore, urged that the prosecution case may be accepted, the appeal may be allowed and the judgment and order impugned herein may be set aside and the respondent may be convicted for the charges with which he was charged.

6. This Court has closely examined the record and proceedings. The prosecution case is found to have a number of lacunas as held by the learned Trial Magistrate.

7. It is the case of the prosecution that the respondent made certain entries in the register to indicate that the muddamal was sent to the Court. It is also the case of the prosecution that he forged the signature of the Court Clerk to indicate that the muddamal was received by the Court Clerk, whereas, in fact, muddamal is not sent to the Court and is not received. In this regard, if the evidence is seen, it is amply clear that the evidence of handwriting expert does not specifically indicate that the so called forged signatures of the Court Clerk were made by the respondent. Same is the case regarding the entries in question. Therefore, the case regarding the respondent having forged the signature and having made false entry cannot be said to have been proved beyond reasonable doubt. Even other witnesses are not able to specifically indicate that the writings are that of the accused-respondent. It is to be borne in mind that where such writings are the foundation of an alleged crime by the accused, they are required to be proved authentically by an expert. Here, the expert, who is examined, is not able to specifically certify that the writings are that of respondent and respondent alone.

8. Apart from the above aspect, another aspect that requires to be considered is that, as per the entries

made in the Register, the muddamal was sent for having deposited in the Court. Through whom it was sent or whether it was the accused who was entrusted with the muddamal for being sent to the Court is not proved by the prosecution.

9. It requires to be noted that from the deposition of the Investigating Officer, P.S.I. Dhisumal Manrupji Raval, notices given to the accused (Ex.79, 80 and 81) were not relating to N.C. Cases No.2/76, 2/77, C.R. No.142/78 and 1/79, whereas the case in fact is for these numbers. This also raises a doubt as to whether really the amount was entrusted and defalcated or misappropriated by the accused.

10. This Court has gone through the judgment and order impugned herein. The learned Magistrate has discussed every piece of evidence in detail. There appears not any error of law or fact which would call for any interference by this Court in exercise of appellate jurisdiction to disturb the order of acquittal. This Court is in agreement with the reasoning adopted and conclusions arrived at by the learned Trial Magistrate. The learned Additional Public Prosecutor could not point out any defects in the judgment and order impugned herein which may persuade this Court to interfere with the judgment and order impugned herein. The appeal is found devoid of merits and must, therefore, fail. The appeal is dismissed. The judgment and order of acquittal passed by the learned Trial Magistrate is hereby confirmed.

[A.L. DAVE, J.]

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